

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Arts Academy in the Woods
Certification Penalty
Docket No. CP 19-20

BACKGROUND FACTS

In a letter dated August 16, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Arts Academy in the Woods that the department had determined that Arts Academy in the Woods had employed Brett Guay and Brett Wotherspoon as teachers in violation of state law. According to the letter, Arts Academy in the Woods' employment of Mr. Guay and Mr. Wotherspoon from September 17, 2018, to June 4, 2019 (Mr. Guay) and January 14, 2019, to June 17, 2019 (Mr. Witherspoon) was illegal in that, during those periods, they did not hold valid Michigan teaching certificates and they were not working under substitute permits. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Arts Academy in the Woods in the amount of \$45,491.84, the total amount of salary Arts Academy in the Woods paid to Mr. Guay (\$28,302.18) and Mr. Wotherspoon (\$17,189.66) during the respective periods of noncompliance.¹

Arts Academy in the Woods appealed the assessment to the superintendent of public instruction on September 4, 2019, and requested to present its appeal at a review conference. Robert Taylor, designee of the superintendent of public instruction, convened a telephonic review conference on September 17, 2019.

¹ Arts Academy in the Woods agrees that these amounts are correct.

DISCUSSION

Unless otherwise provided in the Revised School Code, a teacher shall hold a teaching certificate that is valid for the position to which an employing district assigns the teacher. MCL 380.1231(3); MCL 380.1233(1); MCL 388.1763(1); Mich Admin Code, R 390.1105.² An interim teaching certificate issued to an individual enrolled in an alternative route teacher preparation program is a Michigan teaching certificate for purposes of the Teacher Certification Code. MCL 380.1531i; Mich Admin Code, R 390.1101(l)(i), R 390.1122a. Employers are required to be familiar with the details of the validity of certificates held by their employees. Mich Admin Code, R 390.1117(1).

A district may employ a noncertificated individual as a substitute teacher under certain circumstances and shall obtain a substitute permit for that employment. MCL 380.1233(6); Mich Admin Code, R 390.1141 et seq. A school administrator submits the application for a permit to the department and holds the permit on behalf of the individual whose substitute employment it concerns. Mich Admin Code, R 390.1141(3). As is the case with the certification process, the permit process plays an important role in the screening of school instructional employees for criminal convictions, a vital function of the Department in its efforts to safeguard pupils' safety. See Mich Admin Code, R 390.1141(6)(b) (conviction of a crime described in section 1535a of the Revised School Code, MCL 380.1535a, is a sufficient ground for denial or revocation of a permit).

² The administrative rules governing certification have the force and effect of law. *Detroit Base Coalition for Human Rights of Handicapped v Director, Department of Social Services*, 431 Mich 172, 177 (1988).

The assessment of a state aid deduction in this case was under section 163 of the State School Aid Act, MCL 388.1763, which provides in pertinent part as follows.

(1) Except as provided in the revised school code, the board of a district or intermediate district shall not permit any of the following:

(a) Except for an individual engaged to teach under section 1233b of the revised school code, MCL 380.1233b, an individual who does not hold a valid certificate or who is not working under a valid substitute permit, authorization, or approval issued under rules promulgated by the department to teach in an elementary or secondary school.

(2) Except as provided in the revised school code, a district or intermediate district employing individuals in violation of this section shall have deducted the sum equal to the amount paid the individuals for the period of employment.

In *Grand Rapids Education Association v Grand Rapids Board of Education*, 170 Mich App 644, 648 (1988), the Court of Appeals held that the plain words of MCL 388.1763 require the department to impose a state aid penalty when a district employs noncertified teachers.

Where statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded; the Legislature must have intended the meaning it plainly expressed, and the statute must be enforced as written. [*Nerat v Swacker*, 150 Mich App 61, 64; 388 N.W.2d 305 (1986), lv den 426 Mich 857 (1986).]

MCL 388.1763; MSA 15.1919(1063) clearly and unambiguously states that a board of a school district shall not permit unqualified teachers to teach and that a district employing unqualified teachers shall be penalized. Unqualified teachers taught in Grand Rapids public schools. Therefore, the Grand Rapids School District must

be penalized. There is really no need for further analysis in view of the clarity of the statutory pronouncements.

The facts in the instant case are as follows.

Brett Guay does not hold, and has never held, a Michigan teaching certificate. Arts Academy in the Woods employed him as a high school digital art teacher beginning on September 17, 2018, but did not obtain a substitute permit to allow his employment until June 4, 2019.

Brett Wotherspoon does not hold, and has never held, a Michigan teaching certificate. Arts Academy in the Woods employed him as a high school English language arts teacher from January 14, 2019, until the school year ended on June 17, 2019. The district did not obtain a substitute permit to allow its employment of him during the 2018-2019 school year. According to Arts Academy in the Woods, Mr. Wotherspoon is enrolled in an alternative route teacher preparation program but he has not passed the applicable Michigan test to be eligible for an interim teaching certificate under MCL 380.1531i(2)(c).

In support of its appeal, Arts Academy in the Woods notes that, at the beginning of the 2018-2019 school year, there was turnover in the district's administrative position responsible for ensuring compliance with teacher certification requirements. In addition, Arts Academy in the Woods reports that it has recently implemented measures to help ensure that the individuals it employs in teaching positions satisfy certification requirements.

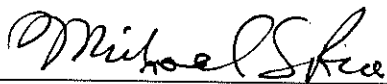
I am not unsympathetic to the challenges posed by staff turnover and I commend Arts Academy in the Woods for the recent improvement in its certification oversight process. Moreover, I am mindful of the financial plight of school districts

against which the department assesses state aid penalties based on their employment of uncertified educators. However, it is the ongoing responsibility of school districts to ensure compliance with legal requirements related to instructional employees' credentials, and it is the responsibility of the department, which is subject to monitoring by the Auditor General, to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. I therefore uphold the assessment of the state aid penalty against Arts Academy in the Woods in this case.

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Arts Academy in the Woods based on its employment of Brett Guay from September 17, 2018, to June 3, 2019, and its employment of Brett Witherspoon from January 14 2019, to June 17, 2019, in the total amount of \$45,491.84.

I am transmitting this decision to the Office of Educator Excellence for implementation.



Michael F. Rice, Ph.D.
Superintendent of Public Instruction

Dated: October 9, 2019